preparing a message to be transmitted by a portable communication device, wherein preparing includes receiving an indication of one or more attributes defining a user defined event associated with the message; and

transmitting the message from the portable communication device upon the occurrence of [[a]] the user defined event.

25. The article of claim 24, wherein the instructions, when executed, further result in transmitting the message from the portable communication device to a base station.

26. The article of claim 24, wherein the instructions, when executed, further result in specifying the user defined event.

27. The article of claim 26, wherein the instructions, when executed, further result in specifying an acceptable quality of service level at which the message is to be transmitted.

28. The article of claim 26, wherein the instructions, when executed, further result in specifying an acceptable level of service level at which the message is to be transmitted.

REMARKS

This response is provided in reply to an Office Action mailed **July 12, 2004**. Claims 1-28 remain pending with this response. Each of the pending claims were rejected under 35 USC §103(a) in view of various combinations of references, as detailed below. With this response, the rejection of such claims is respectfully traversed. Accordingly, reconsideration of this application, as amended, is respectfully requested.

§103(a) Rejection of Claims 1-5, 11, 13-14, 16-21 and 23-28

In the Action, claims 1-5, 11, 13-14, 16-21 and 23-28 were rejected as being unpatentable over a patent issued to Thakkar (USP 6,487,602) in view of a patent issued to Johnson, et al. (USP 6,556,826), pursuant to 35 USC §103(a).

In an effort to conclude prosecution of this matter, without adopting the characterization of the rejected claims or the cited references, and without conceding the appropriateness of the proposed combination of references cited in the Action, Applicant has selectively amended claims 1, 13, 19, and 24, as above.

Applicant respectfully submits that claims 1, 13, 19, and 24, as selectively amended, are not obvious in view of at least the cited references. Accordingly, Applicant respectfully requests that the 35 USC §103(a) rejection of such claims be withdrawn.

Applicant notes that claims 2-12, 14-18, 20-23, and 25-28 depend from patentable base claims 1, 13, 19 and 24, respectively. Thus, in addition to any independent bases for patentability, such claims are likewise patentable over the cited references by virtue of at least such dependence on patentable base claims 1, 13, 19 and 24, respectively. Accordingly, Applicant respectfully requests that the §103(a) rejection of such claims be withdrawn.

In **paragraph 5** of the Action, claim 5 was rejected as being unpatentable over Thakkar in view of Johnson. In response, Applicant respectfully traverses the rejection of such claim.

In addition to the other bases for patentability provided above, claim 5 includes a feature wherein the user defined event includes an acceptable cost level at which the message is to be sent. In rejecting the claim, the Action points to a passage from the Johnson reference that merely describes information retrieval during off-peak and non-busy periods. Applicant notes that the reference does not suggest or disclose in the specification that such off-peak and non-busy periods

are distinguished by a cost threshold, or that such cost threshold is established by the user. Thus, Applicant respectfully submits that neither Thakkar nor Johnson describe an environment wherein the acceptable cost level at which the message is sent, is defined by the user.

In this regard, Applicant respectfully asserts that neither the Thakkar nor the Johnson references, alone or in combination, disclose or suggest that which is claimed in claim 5. Accordingly, Applicant respectfully requests that the §103(a) rejection of claim 5 be withdrawn.

Applicant notes that claim17 includes a feature similar to that of claim 5. Accordingly, Applicant respectfully submits that claim 17 is similarly patentable over the cited references, and that the rejection of such claim should be withdrawn.

In **paragraph 16** of the Action, claim 16 was rejected as being unpatentable over Thakkar in view of Johnson. In response, Applicant respectfully traverses the rejection of such claim.

In addition to the other bases for patentability provided above, claim 16 includes a feature wherein the transmission condition includes defining an acceptable quality of service level for when the message is to be transmitted. In rejecting the claim, the Action points to sections from the Johnson reference that describe a system that dynamically adjusts the rate of information retrieval based on network capacity. Applicant notes that the reference does not suggest or disclose in the specification that network capacity is distinguished by a quality of service threshold, or that such quality of service threshold is established by the user. Thus, Applicant respectfully submits that neither Thakkar nor Johnson describe an environment wherein the acceptable quality of service level at which the message is sent, is defined by the user.

In this regard, Applicant respectfully asserts that neither the Thakkar nor the Johnson references, alone or in combination, disclose or suggest that which is claimed in claim 16. Accordingly, Applicant respectfully requests that the §103(a) rejection of claim 16 be withdrawn.

Applicant notes that claim 23 includes a feature similar to that of claim 16. Accordingly, Applicant respectfully submits that claim 23 is similarly patentable over the cited references, and that the rejection of such claim should be withdrawn.

In **paragraph 7** of the Action, claim 7 was rejected as being unpatentable over the Thakkar and Johnson references in further view of a patent issued to Lazaridis et al. (US 6,401,113). In response, Applicant traverses the rejection of this claim.

In addition to the foregoing bases of patentability, claim 7 includes a feature wherein the user defined event includes specifying an acceptable security level at which the message is to be sent. In rejecting the claim, the Action acknowledges that the Thakkar and Johnson references fail to disclose or suggest a system wherein the user defined event includes specifying an acceptable security level. The Action cites the Lazaridis reference as curing this deficiency. However, while the Lazaridis reference describes message encryption, the cited passages fail to disclose or suggest that a security level could be set as a user defined event which triggers the transmission of a message. Rather, Lazaridis merely describes a repackaging technology that enables encryption of messages sent to and from a mobile device. That is, the Lazaridis reference fails to describe a situation in which the security level is user defined.

In this regard, Applicant respectfully submits that i) Lazaridis fails to disclose or suggest a feature wherein user defined event includes specifying an acceptable security level at which the message is to be sent; and ii) an artisan reading the Lazaridis reference would not be motivated to set a security level as a user defined event without using the pending claim as a model. In this regard, Applicant respectfully submits that the Action is using impermissible hindsight reconstruction to find the elements of the rejected claims in the prior art.

Accordingly, Applicant respectfully submits that the cited references fail to disclose or suggest that which is claimed in rejected claim 7. Thus, Applicant respectfully requests that the §103(a) rejection of such claim be withdrawn.

Applicant notes that claims 15 and 22 include a feature similar to that of claim 7. Accordingly, Applicant respectfully submits that claims 15 and 22 are similarly patentable over the cited references, and that the rejection of such claims should be withdrawn.

In **paragraph 10** of the Action, claim 10 was rejected as being unpatentable over Thakkar and Johnson et al. in view of Lele et al (USP 6,185,433). In response, Applicant respectfully traverses the rejection of such claim.

In addition to the other bases for patentability provided above, claim 10 includes a feature wherein transmitting the message includes wirelessly transmitting the message to a receiver and disabling a ringing function of the receiver. In rejecting claim 10, the Action relies primarily on the Lele reference. Applicant respectfully submits, however, that the Lele reference fails to disclose or suggest a feature wherein transmitting the message includes wirelessly transmitting the message to a receiver and disabling a ringing function of the receiver.

Rather, Lele merely describes how the called device in operational busy mode returns a message to the calling device that the called device is busy. Again, in this regard, the Lele reference fails to disclose or suggest that transmitting the message includes disabling a ringing function of the receiver.

In this regard, Applicant respectfully asserts that the cited references, alone or in combination, fail to disclose or suggest that which is claimed in claim 10. Accordingly, Applicant respectfully requests that the §103(a) rejection of claim 10 be withdrawn.

In **paragraph 6** of the Action, claim 6 was rejected as being unpatentable over the Thakkar and Johnson references in further view of a patent issued to Haartsen et al (USP

6,519,236) pursuant to 35 USC §103(a). In response, Applicant traverses the rejection of this claim.

In addition to other bases of patentability introduced above, claim 6 includes a feature wherein the user defined event includes specifying an acceptable transmission power level at which the message is to be sent. In rejecting claim 6, the Action relies primarily on the Haartsen reference. Applicant respectfully submits, however, that the Haartsen reference fails to disclose or suggest a feature wherein the user defined event includes specifying an acceptable transmission power level at which the message is to be sent.

Rather, Haartsen merely describes how power might be increased or decreased as a function of distance. Applicant notes that the reference does not disclose or suggest an acceptable transmission power level as part of a user defined event at all. The reference plainly fails to describe an environment wherein the acceptable transmission power level is defined by the user.

Applicant respectfully submits that an artisan would not be motivated after a reading of the Haartsen reference to use an acceptable transmission power level as a user defined event without using the pending claim as a model. In this regard, Applicant respectfully submits that the Action is using impermissible hindsight reconstruction to find the elements of the rejected claims in the prior art.

In view of the foregoing, Applicant respectfully submits that the cited references fail to disclose or suggest that which is claimed in rejected claim 6. Accordingly, Applicant respectfully requests that the §103(a) rejection of claim 6 be withdrawn.

In **paragraph 8** of the Action, claim 8 was rejected as being unpatentable over the Thakkar and Johnson references in further view of a patent issued to Haartsen et al (USP 6,519,236) pursuant to 35 USC §103(a). In response, Applicant traverses the rejection of this claim.

In addition to other bases of patentability introduced above, claim 8 includes a feature wherein the user defined event includes specifying an acceptable distance from a base station at which the message is to be sent. In rejecting claim 8, the Action relies primarily on the Haartsen reference. Applicant respectfully submits, however, that the Haartsen reference fails to disclose or suggest a feature wherein the user defined event includes specifying an acceptable distance from a base station at which the message is to be sent.

Rather, Haartsen merely describes how power might be increased or decreased as a function of distance. Applicant notes that the reference does not disclose or suggest an acceptable distance from a base station as part of a user defined event at all. The reference plainly fails to describe an environment wherein the acceptable distance from a base station is defined by the user.

Applicant respectfully submits that an artisan would not be motivated after a reading of the Haartsen reference to use an acceptable distance from a base station as a user defined event without using the pending claim as a model. In this regard, Applicant respectfully submits that the Action is using impermissible hindsight reconstruction to find the elements of the rejected claims in the prior art.

In view of the foregoing, Applicant respectfully submits that the cited references fail to disclose or suggest that which is claimed in rejected claim 8. Accordingly, Applicant respectfully requests that the §103(a) rejection of claim 8 be withdrawn.

Conclusion

The foregoing is submitted as a full and complete response to the Office Action mailed **July 12, 2004**. In view of the foregoing amendments and remarks, Applicant respectfully submits

that pending claims 1-28 are in condition for allowance and a notification of such allowance is respectfully requested.

Should it be determined that an additional fee is due under 37 CFR §§1.16 or 1.17, or any excess fee has been received, please charge that fee or credit the amount of overcharge to deposit account #50-0221.

If the Examiner believes that there are any informalities which can be corrected by an Examiner's amendment, a telephone call to the undersigned at (503) 439-8778 ext 235 is respectfully solicited.

Respectfully submitted,
Alex D. Starkovich, et al.

Dated: 10.12.04

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